Resource Contact:	Policy and Technical Support Staff	*Effective:*	April 8, 1992
References:	Cancels Policies 101 and 102	*Revised:*	June 10, 2004

Policy 300 Site Discovery—Reporting Releases

The Model Toxics Control Act (MTCA), Chapter 70.105D RCW, requires the Department of Ecology (Ecology) to establish a program to identify sites potentially contaminated with hazardous substances. That program is set forth in WAC 173-340-300, which is part of the MTCA Cleanup Regulation, chapter 173-340 WAC. Under that program, Ecology requires owners and operators to report releases of hazardous substances occurring as consequence of past practices. Releases occurring as a consequence of current practices must be reported under other authorities.

Ecology believes it is in the interest of the state and the public in the vicinity of contaminated sites to be informed of these sites, and encourages all persons to report any discovery of a release of hazardous substances to the environment. This policy provides guidance on the types of releases that should be reported under WAC 173-340-300 and the procedures for reporting such releases.

1. Owners And Operators Are Required To Report Releases.

Owners and operators are required to report the discovery of a release of hazardous substances that may pose a threat to human health or the environment. Persons other than owners and operators are strongly encouraged to report knowledge of any release to the environment.

2. Releases Must Be Reported Within A Specified Time Period.

A. For confirmed releases from Underground Storage Tanks (UST) regulated under chapter 90.76 RCW, the release must be reported within 24 hours of discovery (WAC 173-340-450(2)).

B. For other releases of hazardous substances, the release must be reported within ninety (90) calendar days of discovery (WAC 173-340-300(2)).

However, pursuant to WAC 173-340-515 (4)(c), if an independent remedial action is completed within ninety (90) calendar days of discovery, a single written report may be submitted on both the release and the action taken. The combined report must include the information specified in WAC 173-340-515(4)(b) and be submitted within ninety (90) calendar days of completion of the remedial action.

For additional information regarding the reporting of independent remedial actions, see WAC 173-340-515(4) and POL 515, Independent Remedial Actions.

3. Some Releases Are Exempt From The Reporting Requirement.

Pursuant to WAC 173-340-300(3), the following releases of hazardous substances are exempt from the reporting requirements, and therefore do not need to be reported to Ecology:

A. Application of pesticides and fertilizers for their intended purposes and according to label instructions;
B. Lawful and non-negligent use of hazardous substances by a natural person ("unincorporated individual") for personal or domestic purposes;
C. A release in accordance with a permit that authorizes that release;
D. A release previously reported to Ecology in fulfillment of a reporting requirement in chapter 173-340 WAC or in another law or regulation;
E. A release previously reported to the United States Environmental Protection Agency under CERCLA ("Superfund"), Section 103(c) (42 U.S.C. Sec. 9603(c));
F. A direct release to the air from an industrial or commercial process or operation; *Note*: Release that is exempt from the reporting requirements should still be reported to the local air pollution control agency, which for some counties is the Ecology regional office.
G. Releases discovered in public water systems regulated by the Department of Health (rules governing the reporting of these releases to the Department of Health are in chapter 246-290 WAC); or
H. A release to a permitted wastewater facility.

These exemptions are intended primarily to avoid duplicate reporting requirements. An exemption from the reporting requirements is not a release from liability under RCW 70.105D.040.

4. When Determining Whether A Release Has Occurred, Persons Should Rely On Physical Evidence.

Persons should rely on available physical evidence to determine whether hazardous substances have been released to the environment. If there is physical evidence that a release has occurred, then the release must be reported if it may be a threat to human health or the environment (see Section 5 of this policy). The release report submitted to Ecology should be based on physical evidence. Examples of physical evidence include visual observations, readings from field instruments, and lab data. Ecology does not expect that additional testing be performed for the purpose of complying with the reporting requirements of WAC 173-340-300 or this policy, only that available information is provided.

5. When Determining Whether A Release Should Be Reported, Persons Should Use "Best Professional Judgment."

To determine whether a release of hazardous substances poses a threat, or potential threat, to human health or the environment, persons should use their "best professional judgment." In making this determination, persons are expected to use the regulation

(Chapter 173-340 WAC), the guidance contained in this policy, and their professional training and experience.

To assist persons in making this determination, Section 6 of this policy describes several situations where the release of hazardous substances is presumed to pose a threat, or potential threat, to human health or the environment.

Ecology recognizes that hazardous substances can be found at almost any commercial or industrial facility. The presence of such substances does not necessarily mean that a release has occurred. Even if a release has occurred, the release may not need to be reported under MTCA, either because the release does not pose a threat or because the release is regulated under another authority. For example, the presence of asbestos in a building, scrap metal at a commercial facility, litter along a roadway, or hazardous substances in wastewater conveyance systems do not need to be reported under MTCA.

If you determine, based on your best professional judgment, that the release does not pose a threat or potential threat, then you do not need to report the release. When an environmental consultant recommends that a site be reported to Ecology, the owner/operator must report that site to Ecology.

Failure to report a site is a violation of the law and could result in enforcement action. If you are not sure if a release should be reported, you should report the release to Ecology. You may contact Ecology if you need assistance in determining whether or not to report a release. A map of Ecology's regional offices can be found at http://www.ecy.wa.gov/org.html.

6. Ecology Has Determined That Certain Types Of Releases Should Be Reported.

Ecology has determined that the following types of releases of hazardous substances pose a threat, or potential threat, to human health or the environment, and therefore should be reported under WAC 173-340-300. These types of releases are presumed to pose a threat, or potential threat, based on the risk assessment process set forth in chapter 173-340 WAC.

Note that the guidance contained in this section of the policy, which reflects the guidance provided in WAC 173-340-300(2)(b), does not provide an exhaustive list of releases that should be reported. Other types of releases not described herein may also pose a threat, or potential threat, to human health or the environment and should be reported. The purpose of this guidance is merely to provide some examples of obvious situations that should be reported under WAC 173-340-300.

A. Releases to ground water or surface water causing a health hazard based on ingestion;

   Finding any hazardous substance in potable ground water, or surface water classified as suitable for use as drinking water supply under chapter 173-201A WAC, in excess of the natural background and any one of the following applicable federal or state standards:

i. Maximum contaminant levels (MCL) established under the Safe Drinking Water Act and published in 40 C.F.R. Part 141;
ii. Maximum contaminant level goals (MCLG) for non carcinogens established under the Safe Drinking Water Act and published in 40 C.F.R. Part 141; or
iii. Maximum contaminant levels (MCL) established by the Department of Health and published in chapter chapter 246-290 WAC.

This includes ground water both inside and outside the facility boundaries.

Pursuant to WAC 246-290-480, if contamination is found in a public water supply in excess of the MCL established by the Department of Health, the water purveyor is also required to report the contamination to the Department of Health.

B. Release to surface water;

Finding any hazardous substance in surface water or sediment, including run-off leaving a facility, at levels exceeding the natural background level and any one of the following federal or state ambient water quality criteria that are based on the protection of human health or aquatic organisms:

i. State water quality criteria published in chapter 173-201A WAC;
ii. Federal water quality criteria published in the National Toxics Rule, 40 C.F.R. Part 131; or
iii. Federal water quality criteria established under section 304 of the Clean Water Act (see http://www.epa.gov/waterscience/standards/wqcriteria.html)
iv. Marine sediment quality standards chemical criteria – Table 1 in WAC 173-204-320

Example: There is an unpermitted leachate seep from an area of fill at a landfill.

As discussed in Section 3 of this policy, permitted discharges do not need to be reported under MTCA. However, spills must be reported immediately under state water quality laws.

C. Releases to the air causing a health hazard based on inhalation:

i. Indoor Air

Finding any vapors in a building, utility vault, or other structure that appear to be entering the structure from nearby contaminated soil or ground water.

- Example: Finding vapors in a building (or other structure) originating from nearby contaminated soil or ground water that might require workers to wear respirators or self-contained breathing apparatus (SCBA).

- Example: Finding vapors in a building (or other structure) originating from nearby contaminated soil or ground water at concentrations that pose an explosive hazard. For the purposes of this policy, hazardous substance concentrations exceeding 10% of the lower explosive limit (LEL) pose an explosive hazard. For example, gasoline vapor originating from a leaking tank and in excess of 1,000 ppm (10% of LEL) should be reported.

ii. Ambient Air

Finding vapors in the ambient air or in the soil exceeding natural background levels that appear to be originating from waste material or from contaminated soil, sediment or water.

- Example: Finding vapors in the ambient air or in the soil originating from waste material or from contaminated soil, sediment or water that might require workers (such as those installing underground utilities) to wear respirators or self-contained breathing apparatus (SCBA).
- Example: Finding vapors in the ambient air or in the soil originating from waste material or from contaminated soil, sediment or water that pose an explosive hazard. For the purposes of this policy, hazardous substance concentrations exceeding 10% of the lower explosive limit (LEL) pose an explosive hazard. For example, methane originating from decomposing waste and in excess of 5,000 ppm (10% of LEL) should be reported. If the gas is collected and controlled by a venting system approved by Ecology, then no additional reporting is necessary.

As discussed in Section 3 of this policy, releases of hazardous substances to the air originating from an industrial or commercial process or operation do not need to be reported under MTCA. However, such releases should still be reported to the local air pollution control agency, which for some counties is the Ecology regional office.

D. Sites where hazardous substances have been leaked or dumped on the ground;

- Example: Finding waste materials or contaminated soil at levels that could cause immediate injury such as burning the skin or causing damage to vegetation or wildlife.
- Example: Transformer leaks and leaks from industrial process lines or storage tanks.
- Example: Spillage or dumping of chemicals on the ground.
- Example: Heavily stained soil or soil with a strong odor.

E. Releases resulting in the formation of free product;

Finding unconfined petroleum product or other organic liquids (as a "free" liquid) on the ground or in the ground water.

- Example: Diesel fuel found floating on the ground water table or solvents puddling around a drum on the ground.

This situation is not intended to include the incidental surface spillage that occurs at a service station during vehicle refueling.

F. Releases of dangerous wastes;

Finding a site where solid wastes designated as dangerous wastes, have been released to the environment without a permit or not in accordance with a permit.

- Example – Industrial Waste: Finding wastes from commercial or industrial operation (such as sludge from a wastewater treatment plant or dust from a bag house) that have been abandoned or disposed of without a permit.
- Example – Unexploded Ordnance: Military munitions discharged during military activities and left in place at a firing range at the time the range is closed or transferred constitute "discarded materials" and therefore "solid wastes." If those discharged munitions remain unexploded, then those munitions (unexploded ordnance) also constitute "dangerous wastes" because those munitions exhibit one or more dangerous waste characteristics.

As defined in WAC 173-303-040, a "dangerous waste" is any solid waste designated in WAC 173-303-070 through 173-303-100 as a dangerous, or extremely hazardous or mixed waste.

As defined in WAC 173-303-016, a "solid waste" is any discarded material, not excluded under WAC 173-303-017, which has been

i. Abandoned;
ii. Recycled;
iii. Considered inherently waste-like; or
iv. Military munition identified as a solid waste at WAC 173-303-578(2).

Under WAC 173-303-070, to determine whether the "solid waste" is also a "dangerous waste," one must

i. Determine whether the waste is a listed discarded chemical product in accordance with WAC 173-303-081;

ii. Determine whether the waste is a listed dangerous waste source in accordance with WAC 173-303-082;

iii. Determine whether the waste exhibits any dangerous waste characteristics (listed below) in accordance with WAC 173-303-090; and

- Ignitability;
- Reactivity;
- Corrosivity; and
- Toxicity.

iv. Determine whether the waste meets any dangerous waste criteria (listed below) in accordance with WAC 173-303-100.

- Toxicity; and
- Persistence.

For more information regarding the identification of solid wastes and the designation of dangerous wastes, please refer to chapter 173-303 WAC and the following fact sheet published by the Hazardous Waste and Toxics Reduction Program: "Designating Dangerous Waste," Pub #96-436 (revised Dec. 2002).

G. Contaminated soil designated as dangerous waste;

Finding any contaminated soil which upon removal, would be designated as a dangerous waste under the Dangerous Waste Regulations, chapter 173-303 WAC. For guidance regarding the designation of dangerous wastes, see above.

- Example: In the process of installing an underground utility, a worker encounters a dark soil with a strong gasoline odor. The soil is stockpiled and sampled. It is found to fail the toxicity characteristic leaching procedure (TCLP) test for benzene, requiring it to be handled and disposed of as a hazardous waste. The release should be reported to Ecology.

H. Abandonment of containers of hazardous substances;

Finding any abandoned containers, such as drums or tanks, located above or below ground, still containing more than trace residuals of hazardous substances. Abandoned drums and tanks that potentially contain hazardous substances should be checked only by environmental professionals. For the purposes of this policy, "abandoned" means not being managed in accordance with the Dangerous Waste Regulations, Chapter 173-303 WAC.

NOTE: Caution! Drums or tanks containing even trace levels of many contaminants can explode or emit toxic vapors. Do not open or enter these tanks or drums without proper training and protective equipment.

I. Release from regulated underground storage tanks (UST);

   Finding any release from an underground storage tank regulated under chapter 90.76 RCW, including those tanks containing petroleum (e.g., gasoline and diesel) or other “regulated substances” (see definition in WAC 173-360-120).

J. Finding a site where unpermitted industrial waste disposal has occurred at a location not permitted for the disposal of these wastes. For example, finding an industrial waste dump site for ash, slag, sludge or similar materials.

K. Finding any other situation where, because of site-specific circumstances, there is a potential threat to human health or the environment due to the release of hazardous substances.

7. The Release Report Must Include Certain Information, If Known.

Persons may submit the release report to Ecology in writing or over the telephone. The release report must include the following information, if known:

A. The name(s) and address(es) of the owner and operator of the site;
B. The location of the site (street address, and latitude/longitude if available);
C. The hazardous substances released and their location (latitude/longitude if available);
D. The circumstances of the release and the discovery of the release (including how and when the release occurred and was discovered);
E. The results of all remedial investigations and cleanup actions;
F. The results of any compliance monitoring planned or underway; and
G. If a restrictive covenant has been placed on the property deed as part of the remedial action, a copy of the covenant that the County has stamped with a filing number.

Ecology may request additional information be provided and may specify that written documentation be submitted.

If multiple releases have occurred and the above information is unavailable for each occurrence, a report summarizing the current site conditions may be submitted in fulfillment of these requirements.

8. Persons Must Submit The Release Report To The Appropriate Ecology Regional Office.

Persons must submit the release report to the Toxics Cleanup Program in the Ecology regional office responsible for the County where the site is located. A map of Ecology's regional offices can be found at http://www.ecy.wa.gov/org.html.

9. Ecology Must Respond To The Release Report Consistent With WAC 173-340-300(5).

Pursuant to WAC 173-340-300(5) and 173-340-310(2), Ecology must determine whether an initial investigation is required based on the information in the report and other available information. If Ecology determines that an initial investigation is required, then Ecology must conduct an initial investigation within 90 days of receiving the release report.

For further information regarding the performance of an initial investigation, see WAC 173-340-310 and POL 310A, Initial investigations.

Approved: ___________________________________

James J. Pendowski, Program Manager
Toxics Cleanup Program